(2015) 01 KAR CK 0535

In the Karnataka High Court

Case No : Company Petition No. 45 of 2015

In Re: Biohit Biotech Systems (India) Private Limited

Date of Decision : 09-01-2015

Acts Referred:
Companies Act, 1956 — Section 391, 392, 393, 394, 394

Citation : (2015) 01 KAR CK 0535

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Sanjay Nair, for the Appellant

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—This petition is presented under Sections 391 to 394 of the Companies Act, 1956 by the petitioner company-Biohit Biotech Systems (India) Private Limited, which is a transferor company seeking sanction of the scheme of amalgamation.

2. According to the petitioner company, it was incorporated on 14.10.2009 with the Registrar of Companies, State of Tamil Nadu under the provisions of the Companies Act. The registered office of the petitioner company was shifted from Tamil Nadu to the State of Karnataka by an order passed by the Regional Director, Southern Region, Ministry of Corporate Affairs, on a petition filed by the petitioner. Certified copy of the Memorandum and Article of Association of the petitioner company as amended from time to time is annexed as Annexure-B. Presently, registered office of the company is situated at premises No. 1, No. 69/2 and 69/3, Kunigal Road, Jakkasandra, Nelamangala Taluk, Nelamangala, Bangalore.

3. The details of the share capital of the petitioner - Company as on 31st March 2013 are as follows:-

4. The main objects of the petitioner company as set out in the Memorandum and Articles of Association are as under:-

"i) To develop, manufacture, market, maintain, repair and calibrate liquid handling products and accessories, including mechanical and electronic pipettes and disposable tips as well as diagnostic test systems and products for the screening, prevention and diagnosis of diseases of the gastrointestinal tract, for the in research, health care and industrial laboratories

ii) To carry on the business as engineers, manufactures, producers, processors, makers, converters, refiners, importers, exporters, traders, buyers, sellers, retailers, wholesalers, suppliers, indenters, packers, movers, preservers, agents, sub-agents, merchants, distributors, consignors, jobbers, brokers, concessionaires, otherwise, deal in liquid handling products for the screening, prevention and diagnosis of disease of the gastrointestinal tract, for use in research, health care and industrial laboratories and products related to healthcare and industrial laboratories

Further Object Clause III(B) 3 of the Memorandum of Association of the petitioner company contemplates and authorizes amalgamations, arrangement with other companies"

5. The latest audited balance sheet of the petitioner company as on 31.3.2013 has been annexed as Annexure-C to the petition.

6. Sartorius Weighing India Private Limited, the transferee company (Annexure-D) was incorporated under the provisions of the Companies Act, on 2.6.2011 with the Registrar of Companies, Karnataka. Annexure-D is the certified copy of the Memorandum and Articles of Association of the transferee company The Registered office of the transferee company is at No. 69/2 and 69/3, Kunigal Road, Jakkasandra, Nelamangala Taluk, Bangalore. It is stated that transferee company holds almost the entire issued, Subscribed and Paid-up Equity Share Capital of the petitioner/transferor company. The latest audited balance sheet of the transferee company as on 31.3.2013 is produced at Annexure-E. As the transferee company is the holding company of the petitioner/transferor company, no separate petition seeking sanction or approval of the scheme has been filed by the transferee company. The details of the share capital of the transferee company as on 31.3.2013 are as follows:-

7. The main objects of the transferee company are as under:-

"i) To carry on the business of designing, developing, manufacturing, engineering, assembling, installing, constructing, testing and commissioning, distributing, exporting, marketing and maintenance of products and technical installations in the areas of electrical engineering, electronics, mechanics, weighing technologies, optics, metallurgy, chemical industry, research and services and related activities including providing after sales services of Turnkey projects systems in the areas of electric weighing (continuous and discontinuous), instrumentation and control, rotational machinery monitoring, programmable logic controllers and mixing, blending, bagging, dosing system, electrical equipments, mechanical equipment, apparatus, device for all types of industrial, professional and commercial applications and other industries.

Further Object Clause III(B)(10) of the Memorandum of Association of the Transferee Company contemplates and authorizes amalgamations, arrangement with other companies".

8. It is stated that the Board of Directors of the petitioner company as well as the Board of Directors of the transferee company have approved and adopted the scheme at their respective meetings held on 13.12.2013, by virtue of which, petitioner company is proposed to be amalgamated with the transferee company subject to approval and sanction given by this Court. The resolutions of the petitioner company and the transferee company dated 13.12.2013 are produced as Annexures - F and G respectively to the petition. The reasons and situations necessitating the Scheme of Amalgamation are stated as under:

i) The facilities available with both the companies could be pooled together and the amalgamated company will be better able to utilize the facilities available as one single unit for the benefit of the amalgamated company on a larger scale.

ii) By the proposed amalgamation, the operational costs will be considerably reduced and the management will be able to operate and run the amalgamated company as a single unit more effectively and economically resulting in better turnover and profits.

iii) It will make available to the amalgamated company, the benefit of financial resources, managerial, technical and marketing expertise of the companies.

iv) The proposed amalgamation would bring in greater economics in operation and will help in reducing expenditure considerably.

v) The proposed amalgamation will be conducive to better and more efficient and economic control and conduct of the business.

vi) There will be operational synergy in terms of procurement benefits, common license, reduction of administration wok etc. for the amalgamated company.

vii) The amalgamated company will have the benefit of the combined reserves, assets, manpower and cash flows of both the companies. The combined resources of the amalgamated company will enhance its capability to face competition in the market place more effectively

viii) With the enhanced capabilities and resources at its disposal, the amalgamated company will have greater flexibility to market and meet consumer needs and compete more effectively."

9. According to the petitioner, if the proposed amalgamation is sanctioned, it will take effect from 1.4.2013. Upon amalgamation and by approval of the scheme and the same becoming effective, the petitioner company would become wholly a owned subsidiary of the Transferee company. All the equity shares issued by the petitioner company and held by the transferee company shall stand cancelled

and in lieu thereof, no allotment of any shares in the transferee company shall be made to any person whatsoever and also the entire shares held by the transferee company in the petitioner - company shall stand cancelled. It is also stated that upon the Scheme of Amalgamation becoming effective, petitioner/transferor company shall stand dissolved without being wound up.

10. Petitioner company had filed C.A. No. 196/2014 seeking dispensation of convening and holding of the meetings of the members and creditors of the petitioner company. By order dated 11.2.2014, this Court dispensed with the holding of the meeting. The company petition was filed on 1.3.2014 and as per the orders of this court, the petition was advertised in two daily newspapers namely, ''The Hindu'', - English daily and ''Udayavani'', Kannada daily on 27.3.2014. No objections to the proposed Scheme of Amalgamation has been received.

11. M/s. S.L. Patil and Co, Chartered Accountants were appointed to audit the accounts of the petitioner company and the audit report has been submitted to the effect that the affairs of the company has not been conducted in a manner prejudicial to the interest of the public.

12. C.A. No. 1500/2014 was filed to carry out correction of typographical error in the Scheme of Amalgamation and by order dated 13.11.2014, the said application was allowed and the typographical error has been corrected.

13. Pursuant to the issuance of notice to the Regional Director, Ministry of Corporate Affairs, South East Region, Hyderabad, an affidavit dated 13.6.2014 has been filed making the following observations:-

"(a) That no comments/remarks of the Income Tax Department were received in response to the notice issued on 9.4.2014 to the Income Tax Department giving 15 days time."

(b) That it appears from the MOA of petitioner and transferee company that the main objects of petitioner company being pertaining to mainly medical equipment to be used in research, healthcare and industrial laboratories which needs to be included and dealt by transferee company, if so, transferee company may have to alter their main objects clause to include the main objects of transferor company. However, this matter may be considered by this Hon''ble Court by allowing the same through single window clearance."

Thereafter, another affidavit has been filed on 30.10.2014 enclosing a copy of the letter dated 15.10.2014 written by the Deputy Commissioner of Income Tax, Circle-11(2), Bangalore, to the Principal Officer of the petitioner company as to compliances that have to be made on the approval of the Scheme of Amalgamation to be granted by this Court.

14. Pursuant to the notice issued to the Official Liquidator, a report has been filed stating that M/s. S.L. Patil and Co, Charted Accountants were appointed to scrutinize the books of accounts and records of the petitioner/transferor company

and to submit a report thereon. The Charted Accountants have submitted a report on 1.10.2014 to the Official Liquidator. On the basis of the report of the Charted Accountant, Official Liquidator has stated that transferor company may be dissolved by this Court and further orders on the sanction of the Scheme of Amalgamation may be passed.

15. I have heard learned counsel for petitioner and learned counsel for Registrar of Companies and learned counsel for Official Liquidator and perused the material on record.

16. Learned counsel for petitioner while drawing my attention to the various documents annexed to the petition contended that the petitioner company is a wholly owned subsidiary of the transferee company and that the proposed Scheme of Amalgamation is in the interest of both the companies and that the object of the Scheme of Amalgamation is to enhance the capabilities and resources at the disposal of the amalgamated company so as to increase the market share and meet the consumer needs more effectively. While drawing my attention to the objects and reasons for amalgamation, she contended that the object of the proposed Scheme of Amalgamation is to benefit the final resources, managerial, technical and marketing expertise of the companies. She therefore submitted that there is no legal impediment for this Court to sanction the proposed Scheme of Amalgamation.

17. Learned counsel for Registrar of Companies, while drawing my attention to the affidavits filed by the Registrar of Companies, South East Region, Hyderabad, pointed to the observations made by the Registrar of Companies to the effect that the main object of the petitioner company is in medical equipment used for research, healthcare and industrial laboratories, whereas such objects are not discerned from the objects of the transferee company. She has also drawn my attention to the communication issued by the Income Tax Department to the Registrar of Companies.

18. Learned counsel for official Liquidator submitted that the Official Liquidator has no objection for the Scheme of Amalgamation being sanctioned by this Court.

19. I have considered and compared the objects of the petitioner/transferor company with the objects of the transferee company.

20. It is noted that petitioner company is mainly dealing in designing, developing, manufacturing, marketing advanced equipment which are essentially used in healthcare, but on comparing the same with the object of the transferee company, it is noted that the objects of the transferee company are wide enough in the sense, that it is involved in the business of designing, manufacturing, commissioning, marketing, exporting etc. of all technical installations in industrial projects, engineering the equipment and all devices required in industrial production, chemical and other industries, the latter being an omni bus clause. Therefore, healthcare industry is also one such industry which could be read into the objects of the transferee company.

21. In that view of the matter, I do not think that the objects of the transferee company would cause any legal impediment with regard to the scheme being sanctioned.

22. I have perused the Scheme of Amalgamation and note that the said scheme has comprehensively taken note of all aspects including the benefits as stated in the Scheme of Amalgamation.

23. In this context, reliance could be placed on the decisions of the Hon''ble Supreme Court in the case of Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., (1996) 7 AD 260 : AIR 1997 SC 506 : (1996) 87 CompCas 792 : (1996) 8 JT 205 : (1996) 6 SCALE 595 : (1997) 1 SCC 579 : (1996) 6 SCR 1 Supp : (1996) AIRSCW 3897 : (1996) 8 Supreme 700 and in the case of Hindustan Lever and Another Vs. State of Maharashtra and Another, AIR 2004 SC 326 : (2003) 117 CompCas 758 : (2004) 1 CompLJ 148 : (2003) 9 JT 67 : (2004) 9 SCC 438 : (2003) 5 SCR 685 Supp : (2004) 1 UJ 725 : (2003) AIRSCW 6238 : (2003) 8 Supreme 937 in which the scope and ambit of the jurisdiction of the Company Court has been enunciated.

24. In the circumstances, I do not find any legal impediment in sanctioning the Scheme of Amalgamation.

25. Therefore the petition is allowed on the following terms:-

"(a) That the Scheme of Amalgamation (Annexure-A) be sanctioned so as to be binding on the petitioner company, its shareholders, creditors and also on the transferee company and its shareholders and creditors.

(b) That with effect from 1.4.2013 the entire business projects and undertaking including all movables and immovables and other assets of whatsoever nature and all licences, rights, privileges, claims etc, of the petitioner company be transferred without further act or deed in favour of transferee company and the same be pursuant to section 394 of the Companies Act, 1956 transferred to and vested in the Transferee Company.

(c) That with effect from the transfer date all the debts, liabilities, duties and obligations of the petitioner company will also be transferred to and deemed to be transferred without further act or deed to the transferee company and accordingly, the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the transferee company.

(d) That all the proceedings by or against the petitioner company pending on the transfer date and relating to the property, rights, powers, liabilities, obligations and duties shall be continued and enforced by or against the transferee company.

(e) That the petitioner company be dissolved without an order of winding up.

(f) The Scheme of Amalgamation at Annexure-A is hereby sanctioned subject to the compliances to be made with the Registrar of Companies by filing a copy of this order with the Registrar of Companies, Karnataka, within a period of 30 days from the date of receipt of copy of this order.

(g) Office is directed to draw up decree in Form No. 42 on payment of stamp duty."

